

Assembly Bill No. 2440

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 130232 and 130242 of, to add Section 130051.22 to, and to repeal Sections 130051.21 and 130243 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2440, Bonnie Lowenthal. Los Angeles County Metropolitan Transportation Authority: contracting.

(1) Existing law creates the Los Angeles County Metropolitan Transportation Authority, with specified powers and duties. Existing law requires a contract by the authority for a purchase of supplies, equipment, or materials with the purchase price exceeding \$100,000 to be let to the lowest responsible bidder, or best value proposer.

This bill would increase that amount to \$150,000.

(2) Existing law requires the authority to obtain a minimum of 3 quotations when the expected expenditure exceeds \$3,000 but not \$100,000.

This bill would increase the upper limit of \$100,000 to \$150,000.

(3) Existing law allows the authority, on certain contracts above \$100,000, to take various actions to facilitate contract awards to small businesses.

This bill would, in this regard, delete the requirement for the contracts to be above \$100,000.

(4) Existing law provides for the inspector general of the authority to prepare a prequalification questionnaire to be completed by certain potential contractors. Existing law requires the authority to adopt a change order procedure meeting certain requirements.

This bill would repeal these provisions. The bill would enact new provisions authorizing the authority to establish and maintain a prequalification program for bidders on certain contracts and providing for the authority to require prospective bidders for construction projects to complete and submit a standardized questionnaire and financial statement, as specified. The bill would state legislative intent with regard to the authority's construction change order and related claims process. By imposing new

prequalification requirements on the authority, the bill would impose a state-mandated local program.

(5) Existing law authorizes the authority to enter into contracts with private entities that combine into a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of some or all components of transit systems and certain facilities. Existing law requires a contract under these provisions to be let to the lowest responsible bidder, with a notice requesting bids required to be published in a newspaper of general circulation at least 60 days before receipt of bids.

This bill would allow the authority to select a contractor under these provisions using objective selection criteria in addition to price. This bill would retain the 60-day publication requirement for contracts estimated to exceed \$10,000,000, but would otherwise impose a 30-day requirement. This bill, in the case of the design of projects permitting the selection of subcontractors, would require the contractor to competitively bid those portions and provide the authority with a list of subcontractors, as specified. Once on the list, the bill would provide that the subcontractors shall have the rights provided under a certain part of the Public Contract Code.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the Los Angeles County Metropolitan Transportation Authority (LACMTA) should include in its contracting documents, processes, terms and conditions to resolve construction change orders and related claims. The Legislature further finds and declares that LACMTA has solicited input from major construction contractors, small businesses, the Department of Transportation, and peer

agencies to identify best practices and improve its change order process and should continue to gather input and improve this process.

SEC. 2. Section 130051.21 of the Public Utilities Code, as added by Section 4.3 of Chapter 10 of the Statutes of 1996, is repealed.

SEC. 3. Section 130051.22 is added to the Public Utilities Code, to read:

130051.22. (a) The authority may establish and maintain a prequalification program for bidders on contracts not covered by subdivision (b).

(b) On public projects, as defined in subdivision (c) of Section 22002 of the Public Contract Code, the authority shall require, at a minimum, that prospective bidders for a construction contract complete and submit to the authority a prequalification standardized questionnaire and financial statement in a form specified by the authority, pursuant to subdivision (a) of Section 20101 of the Public Contract Code.

SEC. 4. Section 130232 of the Public Utilities Code is amended to read:

130232. (a) Except as provided in subdivision (f), purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

(b) Except as provided for in subdivision (f), whenever the expected expenditure required exceeds one thousand dollars (\$1,000), but not twenty-five thousand dollars (\$25,000), the commission shall obtain a minimum of three quotations, either written or oral, that permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than fifty thousand dollars (\$50,000), the executive director may act for the commission.

(d) All bids for construction work submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- (1) Cash.
- (2) A cashier's check made payable to the commission.
- (3) A certified check made payable to the commission.
- (4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

(e) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the date that the award was made.

(f) The following provisions apply only to the Los Angeles County Metropolitan Transportation Authority:

(1) The contract shall be let to the lowest responsible bidder or, in the authority's discretion, to the person who submitted a proposal that provides the best value to the commission on the basis of the factors identified in the solicitation when the purchase price of all supplies, equipment, and materials exceeds one hundred fifty thousand dollars (\$150,000). "Best value" means the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to requirements described in the solicitation documents. The contract shall be let to the lowest responsible bidder when the purchase price of the construction of all facilities exceeds twenty-five thousand dollars (\$25,000).

(2) The authority shall obtain a minimum of three quotations, either written or oral, that permit prices and terms to be compared whenever the expected expenditure required exceeds three thousand dollars (\$3,000), but not one hundred fifty thousand dollars (\$150,000).

(3) The authority may purchase supplies, equipment, and materials from a public auction sale, including public auctions held via the Internet, using the procedures established for all other participants in the public auction.

(4) The authority may participate in a procurement agreement involving other public entities that is identified by a procuring public entity or entities as a cooperative procuring agreement from which other public entities may make purchases or enter into contracts, and the authority may procure, and enter into contracts for, items purchased pursuant to that procurement agreement, notwithstanding that the authority may not be the procuring public

entity, provided the procurement agreement is awarded or entered into by either of the following:

(A) One or more public entities or an organization of public entities, which may include the authority.

(B) A federal, state, or local public entity.

(5) (A) Notwithstanding any other provision of law requiring the authority to award contracts to the lowest responsible bidder, the authority may, except as to contracts for professional services involving private architectural, landscape architectural, engineering, environmental, land surveying, or construction management as defined in Sections 4525 and 4529.10 of the Government Code, do any of the following in facilitating contract awards to small businesses:

(i) Provide for a small business preference in construction, the construction component of a design-build team, the procurement of goods, or the delivery of services. The preference to a small business shall be 5 percent of the lowest responsible bidder meeting specifications that provide for small business participation.

(ii) Establish a subcontracting participation goal for small businesses on contracts financed with nonfederal funds and grant a preference of 5 percent to the lowest responsible bidders who meet the goal.

(iii) Require bidders to make a good faith effort, in accordance with the criteria established pursuant to subparagraph (B), prior to the time bids are opened, to comply with the goals and requirements established by the authority relating to participation in the contract by small businesses.

(B) The following shall apply to bidders under this paragraph:

(i) The bidder attended any presolicitation or prebid meetings that were scheduled by the authority to inform all bidders of the small business enterprise program requirements for the project for which the contract will be awarded. The authority may waive this requirement if it determines that the bidder is informed as to those program requirements.

(ii) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by small business enterprises to provide an opportunity for participation by those enterprises.

(iii) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly

newspapers, trade association publications or trade-oriented publications, trade journals, or other media, specified by the authority for small business enterprises that are interested in participating in the project. This clause applies only if the authority gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(iv) The bidder provided written notice of his or her interest in bidding on the contract to the number of small business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. The authority shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the authority as small business enterprises.

(v) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(vi) The bidder provided interested small business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(vii) The bidder requested assistance from small business community organizations; small business contractor groups; local, state, or small business assistance offices; or other organizations that provide assistance in the recruitment and placement of small business enterprises, if any are available.

(viii) The bidder negotiated in good faith with the small business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any small business enterprises, as determined by the authority.

(ix) Where applicable, the bidder advised and made efforts to assist interested small business enterprises in obtaining bonds, lines of credit, or insurance required by the authority or contractor.

(x) The bidder's efforts to obtain small business enterprise participation could reasonably be expected by the authority to produce a level of participation sufficient to meet the goals and requirements of the authority.

(C) "Small business enterprise" as used in this paragraph, means a business enterprise that is classified as a small business under United States Small Business Administration rules and meets the

current small business enterprise size standards found in Part 121 of Title 13 of the Code of Federal Regulations appropriate to the type of work the enterprise seeks to perform. The authority may establish limitations regarding the average annual gross receipts of a small business over the previous three fiscal years and establish limitations regarding the personal net worth of the owner of the small business, exclusive of the value of the owner's personal residence.

SEC. 5. Section 130242 of the Public Utilities Code is amended to read:

130242. (a) In addition to the other powers it possesses, the Los Angeles County Metropolitan Transportation Authority may enter into contracts with private entities, the scope of which may combine within a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of (1) transit systems, including, without limitation, passenger loading or intermodal station facilities, and (2) facilities on real property owned or to be owned by the authority.

(b) The authority may award contracts pursuant to subdivision (a) after a finding, by a two-thirds vote of the members of the authority, that awarding the contract under this section will achieve for the authority, among other things, certain private sector efficiencies in the integration of design, project work, and components.

(c) A contract awarded pursuant to this section may include operation and maintenance elements, if the inclusion of those elements (1) is necessary, in the reasonable judgment of the authority, to assess vendor representations and warranties, performance guarantees, or life-cycle efficiencies, and (2) does not conflict with collective bargaining agreements to which the authority is a party.

(d) Any construction, alteration, demolition, repairs, or other works of improvement performed under a contract awarded pursuant to this section shall be considered a public works project subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and shall be enforced by the Department of Industrial Relations in the same way it carries out this responsibility under the Labor Code.

(e) A contract under this section shall be let to the lowest responsible bidder whose bid is responsive to the criteria set forth in the invitation for bids, or, at the authority's discretion, to a contractor chosen by a competitive bidding process that employs objective selection criteria that may include, but are not limited to, the proposed design approach, features, functions, life-cycle costs, and other criteria deemed appropriate by the authority, in addition to price. Notice requesting bids or proposals shall be published at least once in a newspaper of general circulation. For contracts estimated to exceed ten million dollars (\$10,000,000), publication shall be made at least 60 days before the receipt of the bids or price proposals. For contracts estimated not to exceed ten million dollars (\$10,000,000), publication shall be made at least 30 days before the receipt of the bids or price proposals. The authority, at its discretion, may reject any and all bids and proposals, and may readvertise. All bids and price proposals submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder security: (1) cash, (2) a cashier's check made payable to the authority, (3) a certified check made payable to the authority, or (4) a bidder's bond executed by an admitted surety insurer, made payable to the authority. Upon an award, the security of each unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the authority beyond 60 days from the time the award is made.

(f) When the design of portions of the project permits the selection of subcontractors, the contractor shall competitively bid those portions. The contractor shall provide to the authority a list of subcontractors whose work is in excess of one-half of 1 percent of the total project cost as soon as the subcontractors are identified. Once listed, the subcontractors shall have the rights provided in the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

SEC. 6. Section 130243 of the Public Utilities Code is repealed.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2012

Governor